

ESTTA Tracking number: **ESTTA528239**

Filing date: **03/22/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	Eminence Organic Skincare Inc.
Granted to Date of previous extension	03/24/2013
Address	530 W Broadway, Suite 300 Vancouver, BC V5Z 1E9 CANADA
Attorney information	Robert C. Cumbow; Kellen A. Hade Graham & Dunn PC 2801 Alaskan Way, Suite 300 - Pier 70 Seattle, WA 98121-1128 UNITED STATES ip@grahamdunn.com Phone:206-340-9619

### Applicant Information

Application No	85598908	Publication date	09/25/2012
Opposition Filing Date	03/22/2013	Opposition Period Ends	03/24/2013
Applicant	Jurlique International Pty Ltd 52-54 Oborn Road Mount Barker, SouthAust AUSTRALIA		

### Goods/Services Affected by Opposition

Class 003. First Use: 1994/00/00 First Use In Commerce: 1994/00/00 All goods and services in the class are opposed, namely: Non-medicated skin care preparations
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### Grounds for Opposition

Genericness	Trademark Act section 23
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Attachments	Notice of Opposition.pdf ( 4 pages )(269135 bytes )
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## Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/s/ Kellen A. Hade
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Name	Kellen A. Hade
Date	03/22/2013

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

ÉMINENCE ORGANIC SKINCARE  
INC., a Canadian corporation,

Opposer,

v.

JURLIQUE INTERNATIONAL PTY,  
LTD., an Australian corporation,

Applicant.

Opposition No. \_\_\_\_\_

Mark [standard character]:

**HERBAL RECOVERY**

*Serial No.:* 85/598,908

*Publication Date:* September 25, 2012

**NOTICE OF OPPOSITION**

Éminence Organic Skincare Inc., a Canadian corporation with its principal place of business at 530 West Broadway, Vancouver, B.C., ("**Opposer**"), believes that it will be damaged if a registration is granted on the above-captioned trademark application of Jurlique International Pty Ltd., an Australian corporation doing business at 52-54 Oborn Road, Mount Barker, Australia ("**Applicant**"), and hereby opposes such registration.

As grounds for its opposition, Opposer alleges that:

**Opposer's Business and Trademarks**

1. Opposer is one of the foremost marketers of all-natural personal care products. Its line includes natural, organic and industry-leading biodynamic products. In order to compete within the prestige personal care industry (the "**Industry**"), Opposer owns a portfolio of highly-distinctive trademarks. Among these are, for example, U.S. Reg. No. 3999456 for VITASKIN in International Classes 3 & 5; U.S. Reg. No. 3999192 for KOLORGANIQUE in International Classes 3 & 42; and U.S. Reg. No. 3589183 for BOLDIJARRE in International Classes 41 & 44. These distinctive marks set Opposer apart from Industry competitors.

NOTICE OF OPPOSITION

*HERBAL RECOVERY (Serial No. 85/598,908) -- 1*

Applicant's Application to Register HERBAL RECOVERY

2. Applicant is a competitor in the Industry and, on April 16, 2012, filed with the United States Patent and Trademark Office Application Serial No. 85/598,908 for HERBAL RECOVERY in International Class 3 for "Non-medicated skin care preparations."

HERBAL RECOVERY is Generic and Not Registrable

3. Unlike Opposer's marks, HERBAL RECOVERY, similar iterations, and the individual terms themselves are highly generic within the Industry. Consumers generally know the mark to refer to organic products that restore youth and repair damaged skin. Consumers do not attribute HERBAL RECOVERY exclusively to Applicant, nor does the mark designate skin care products whose origins are attributable only to Applicant.

Opposer's Standing

4. Opposer has spent significant amounts of money and other resources marketing, promoting, and advertising its services under Opposer's Marks and within the prestige skin care industry. Through these efforts, these marks now enjoy valuable consumer recognition and goodwill. Opposer will be damaged if Applicant, through registration of the HERBAL RECOVERY mark, controls a generic term used commonly throughout in the industry.

5. Under 15 U.S.C. § 1063, Opposer believes that Applicant's registration of HERBAL RECOVERY would damage Opposer's business, goodwill, and abilities to compete fairly within the Industry and to describe truthfully certain of its own products.

WHEREFORE, Opposer Eminence Organic Skincare, Inc. prays that the Board sustain this opposition and deny Application Serial No. 85/598,908.

Dated this 22nd day of March, 2013.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert C. Cumbow", written over a horizontal line.

Robert C. Cumbow

Kellen Andrew Hade

**GRAHAM & DUNN PC**

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*Attorneys for Opposer Eminence Organic Skincare*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 22nd day of March, 2013, I served a copy of the attached document by first-class and electronic mail upon:

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Darlyne De Mars

**CERTIFICATE OF ELECTRONIC FILING**

I CERTIFY that on March 22nd, 2013, the forgoing NOTICE OF OPPOSITION regarding the mark "HERBAL RECOVERY" (Serial No.: 85/598,908) is being electronically filed:

/hoshs/  
Shin Hoshikawa